IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 66 OF 2006

Shri Mahadev Tukaram
Kanoji, Residing at Mustifund
High School, Near Goa Urban
Co-operative Bank Ltd.,
Opposite Cobra Security,
Panaji-Goa. ... Applicant

versus

1. Shri Vithal Vasudev Chopdekar,
R/at Chinch Wada,
Chimbel,
Tiswadi, Goa.

2. State through P.P. ... Respondents

Mr. Rohit Bras De Sa, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.2.

Mr. E. Heredia, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 22ND MARCH, 2007.

ORAL ORDER

Heard the learned Counsel on behalf of both the parties. The applicant is an accused who has been convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881 by Order dated 27-1-2006 of the learned J.M.F.C., Panaji and whose conviction was upheld and sentence modified by the learned Additional Sessions Judge(FTC), Panaji.

2. The only point raised in this revision at the time of arguments by Mr. Rohit Bras De Sa, the learned Counsel on behalf of the accused is that the statutory notice was not served upon the accused. The learned Counsel on behalf of the complainant submits that all that the complainant was required to show is that the complainant had dispatched the statutory notice at the correct address of the accused and that was done in this case, and the complainant was not required to do anything more.

3. It is interesting to note that the point raised at the hearing of this revision was not raised on behalf of the accused in

the memo of revision. This is a case where the A.D. card of the statutory notice sent to the accused was returned with the notice delivered to the addressee. The accused did go in the witness box and stated that he did not receive the notice. However, in the examination-in-chief the accused did not state that the signature found on the A.D. card was not his or that it was not of any other member of his family. In cross-examination, the said A.D. card was shown to him and the accused stated that the signature was not his. The learned trial Court took pains to compare the said signature appearing on the said A.D. card with other admitted documents on record and came to the conclusion that the signature on the A.D. card had lot of similarity with the signature of the accused on S.A. and 313 statement. This is a case where the A.D. card was returned to the complainant with the postal article delivered at the given address. A bare denial by the accused or the evidence of the accused himself was insufficient to rebut the statutory presumption available to the complainant in terms of Section 27 of the General Clauses Act.

4. There is no merit in this revision. Hence, the same is hereby dismissed.

N. A. BRITTO, J.

RD